

**Responsiveness Summary for Fact Sheet for
State Waste Discharge Permit ST-7396
Nichols Brothers Boat Builders, Inc.**

Comments from Puget Soundkeepers

Comment:

The Department's decision to issue a State Waste Discharge Permit for the facility—rather than an NPDES permit—reflects an apparent determination that the facility does not discharge to surface waters (including wetlands). However, while purporting to prohibit most discharges to surface waters, the permit and fact sheet actually acknowledge three or four different surface water discharges: (1) discharges to hydrologically-connected groundwaters; (2) stormwater collection system overflows resulting from precipitation events exceeding the design storm; (3) seeps to wetlands; and (4) discharges resulting from marine intrusion. These discharges to surface waters cannot be authorized by a State Waste Discharge Permit.

Response:

The Department suspects but has not concluded that NBBBI is discharging to hydrologically-connected groundwaters. The Department is requiring NBBBI to conduct a hydrogeologic investigation followed up with an engineered design so that all discharges below the 10-year, 24-hour storm events will only be conveyed to ground water, not surface water. This permit has a Compliance Schedule to minimize the amount of time NBBBI has during the interim to discharge water which may be hydrologically-connected to surface water. Construction of the new treatment system which meets the engineered design based on the hydrogeologic investigation is due September 30, 2007.

Comment:

Moreover, the facility's discharges to surface waters cannot be covered by the Industrial Stormwater General Permit (ISGP), because the facility's stormwater is commingled with process wastewater (*see Condition S2A*). The facility's "process rinse water" (fact sheet at 7) is not storm water, and cannot be considered "conditionally approved non-stormwater discharges" under the ISGP because it is contaminated by contact with the boat yard, vessel hulls and decks, and/or the crawler. As a result, the facility's commingled discharges of stormwater and process wastewater cannot be authorized or covered by the ISGP. Ecology should issue an individual NPDES permit covering the facility, or notify the facility that all discharges to surface waters are unpermitted. The matter is far from academic, because the draft permit only requires the facility to meet groundwater quality standards, rather than the far more stringent surface water quality standards applicable in Holmes Harbor.

Response:

The Department recognizes that it may not use the NPDES program to permit discharges of rinse water to surface water under the Stormwater General Permit. Rinse water will be allowed to discharge from the infiltration basin to ground, however, prior to conveying rinse water to the infiltration basin NBBBI is required to demonstrate that the basin will not seep or overflow to surface water. All rinse water or commingled stormwater is prohibited from discharging to surface water and will be collected and hauled or otherwise disposed of so as not to discharge to surface water. The permit has been amended to restrict rinse water from discharging to surface water. Since this permit does not authorize discharges to surface water, effluent limits related to surface water would not be appropriate. Infrequent overflows of stormwater to the wetlands from the infiltration basin are authorized under the Stormwater General Permit.

Comment:

Discharge Limitations (Condition S1, p.5)—The permit should prohibit "all discharges" to Holmes Harbor and wetlands—not merely discharges of pressure wastewater. If pressure wastewater will be specified, the permit should also prohibit all discharges of pressure wastewater to the stormwater treatment and subsurface infiltration system, as indicated by the fact sheet. In addition, with reference to the second, fourth, and fifth bulleted items, the permit should prohibit direct and indirect discharges to surface waters of pressure wash wastewater, bilge and ballast water, and wastewater from cooking, dish washing, showers, hydrotesting of piping system and portable steaming and maintenance shops.

Response:

The Department concurs that all discharges of process water to surface water shall be prohibited. A condition has been added to reflect this change. The permit authorizes process water and storm water to discharge to the infiltration basin. Overflows and seeps from the basin are not authorized under this permit.

Pressure wash wastewater is isolated, contained, and may be recycled and hauled under the permit. Rinse water and wet blasting water are authorized to discharge to ground but shall not discharge to surface. Storm water is an authorized discharge to surface water under the Stormwater General Permit number SO3-003161.

Comment:

Interim and Final Effluent Limitations (Conditions S1.A-S1.C)—The draft permit does not specify when the final effluent limitations will become effective. These provisions are also unclear in other respects.

Response:

Under the Compliance Schedule, the final effluent limitations become effective September 30, 2007. The permit has been modified to more clearly state the requirements. The final effluent limitations are not yet listed in the permit as they will be identified as part of the hydrogeologic investigation. They are partially dependent upon the background ground water quality.

Comment:

Are the "wastewater discharges to ground" covered by S1.A different from discharges to the infiltration basin covered by S1.B? If so, how; and where do these discharges take place?

Response:

No, the discharges in S1.A and S1.B are the same. Discharges authorized under this permit include storm water, rinse water, and hydroblast water. These waste waters are routed to the vault for settling, then through bag filters, then to the infiltration basin. This permit prohibits the discharge of process waters to surface waters of the state.

Comment:

Are the effluent limitations provided in S1.B interim limitations?

Response:

No. These are expected to maintain following the hydrogeologic investigation and the engineering report. The permit will be modified to add final limits. The Department does not expect the new information to change these limits, however, changes can take place by permit modification if new information warrants. This will be subject to public review.

Comment:

With respect to S1.C, when will the "characterization of the effluent" take place? Why wasn't an effluent characterization submitted as part of the facility's permit application? Further, it is unclear which (if any) of the deadlines identified in the Compliance Schedule (Condition S12) applies to the effluent characterization.

Response:

The effluent has been characterized for potential pollutants, however, during the recent application process, TDS was tested for and exceeded state criteria. The hydrogeologic investigation will include sampling of background constituents in the ground water and concurrently NBBBI is required to monitor the effluent to the basin for all constituents previously required and TDS and chloride added as new monitoring requirements.

Comment:

Overflow to Holmes Harbor (Condition S2.D)—The Permit indicates the permittee will not be required to prohibit seeps to wetlands from precipitation events exceeding the 10-year, 24-hour design storm (Permit at 8). As discussed above, the permittee should be informed that any discharges of pollutants to surface waters (including those before September 16, 2007, and those resulting from storms exceeding the design storm) are unpermitted discharges. Also, Condition S2.D identifies sampling and monitoring requirements for stormwater discharged to surface waters. These requirements should be contained in an individual NPDES permit rather than in this State Waste Discharge permit. In addition, NBBBI should be required to install an autosampler to sample any discharges from the overflow pipe that occur outside of regular business hours.

Response:

The Department concurs and the permit has been modified to prohibit seeps from the infiltration basin. As noted above, this permit does not authorize discharges to surface water. Therefore, the permittee has been notified by enforceable permit conditions that all process water discharges to surface water discharges are prohibited. The Department agrees that continuous or an autosampler is ideal but will require only grab samples during business hours at this time.

Comment:

NBBBI should be required to measure or estimate the volume of any storm water and/or rinse water discharged to surface waters through the overflow pipe.

Response:

Condition S2.A requires NBBBI to monitor flow or volume of discharge to the infiltration basin weekly in the rainy season and monthly in the summer. All overflows of process water are prohibited and storm water is covered under a separate permit. Violations must be reported by notification and are required to be tested per Condition S3.E.

Comment:

NBBBI should be required to report any release to surface waters in writing. Any discharges to surface waters should be subject to strict compliance with surface water quality standards.

Response:

This permit does not authorize discharges to surface water and therefore, cannot set limitations for discharges. See comment above. Violations of WAC 173-201A Surface Water Quality Standards are prohibited.

Comment:

Marine Water Inflow (Condition S2.E)—any influx event should be reported to the Department in writing. In addition, the report should be submitted "within 24 hours" as specified in Permit Condition S3.A—not within 48 hours.

Response:

The Department concurs. The permit has been modified to reflect the change.

Comment:

Sampling and Analytical Procedures (Condition S2F)—The phrase "unless otherwise . . . approved in writing by the Department of Ecology (Department)" purports to allow the informal modification of permit terms. This language is impermissible and has been disapproved by the Pollution Control Hearings Board. Ecology should eliminate this language from its permit boilerplate.

Response:

The Department concurs. The permit has been modified to reflect the change.

Comment:

Management of Infiltration Basin Soils (Condition S5)—The permit should identify the date by which the permittee is required to update the Soil Management Plan to be consistent with the 2005 Stormwater Management Manual for Western Washington. The date should be within twelve (12) months of permit issuance.

Response:

The Department concurs. The permit has been modified to require an update of the Soil Management Plan by October 31, 2005.

Comment:

Best Management Practices (Condition S6)—The required identification and implementation of BMPs should be documented and included in the Pollution Prevention Plan (SWPPP) required by Condition S13.

Response:

The permit has been modified to include this language. It is expected that all BMPs will be documented under the Pollution Prevention Plan.

Comment:

Solid Waste Disposal / Leachate (Condition S7.B)—The permit should prohibit any discharge of leachate to surface waters and hydrologically-connected groundwaters. If the Department believes any such discharge may take place at the facility, the discharge should be covered by an individual NPDES permit containing appropriate protective provisions.

Response:

The Department concurs. If the hydrogeologic investigation demonstrates a hydrologic connection, an NPDES permit will be required to ensure protection of surface waters of the state. The permit has been modified to restrict NBBBI to groundwater discharges authorized under this permit.

Comment:

Engineering Report (Condition S8)—The May 1, 2007, date specified here is inconsistent with the March 1, 2007, date specified in the Compliance Schedule (Condition S13).

Response:

The permit has been modified for consistency.

Comment:

Upgrade of Current Wastewater System (Condition S9)—It appears that, despite the permittee's previous unauthorized site expansion which did not involve upgrading the stormwater treatment system to meet applicable modern standards, Ecology will only require the facility to satisfy the "six-month design storm" specified by the 1992 Storm Water Manual until the facility's *next* expansion. This relaxation of modern standards is inappropriate. The permittee should be held accountable for its past expansion (as well as its past discharges to surface waters), and should be required to meet modern standards now.

Response:

The Department concurs. The permit has been modified to prohibit overflows and seeps related to process water and storm water is covered under a separate permit. In addition, NBBBI is required to increase their storage capacity to allow for proper infiltration rates through the basin.

Comment:

Spill Plan (Condition S10)—The deadline for submitting an updated spill control plan should be within twelve (12) months of permit issuance. There is no justification for giving the permittee nearly two years (until May 1, 2007) to update an existing plan.

Response:

The Department concurs. The permit has been modified to require NBBBI to submit an updated spill plan by August 1, 2006.

Comment:

Compliance Schedule (Condition S12)—The compliance schedule should identify quarterly or semi-annual requirements for status reports detailing the permittee's satisfaction of the compliance schedule deadlines. In addition, the permit should require the submission of a Draft Engineering Report (Facility Plan) for the New Wastewater Treatment System within twelve (12) months of permit issuance.

Response:

The Department feels the current Compliance Schedule puts NBBBI on a very tight timeline to complete needed upgrades to the current system while planning for the redesign of the future treatment system. Since the Department is requiring NBBBI to conduct a hydrogeologic investigation and part of that investigation is to monitor the background groundwater for twelve months, it is not feasible to expect NBBBI to submit an engineering plan within 12 months of permit issuance. Monitoring of groundwater requires installation of wells. The Compliance Schedule has intentionally been set to keep NBBBI on a consistently tight schedule to meet water quality goals as soon as possible.

Comment:

Pollution Prevention Plan (Condition S13)—The Pollution Prevention Plan as described is a SWPPP, which should be identified as a required "Permit Report Submittal" on permit page 4. The SWPPP should be submitted to the Department and made available to the public. It is a key part of the facility's pollution control technology. In addition, as noted above, the SWPPP requirements should include the boatyard specific best management practices identified in Condition S6.

Response:

The Department concurs. The permit has been modified to reflect this change. The public may request and review documents through a public information request at the Northwest Regional Office submitted to the Department.

Comments from Friends of Holmes Harbor

Comment:

Please verify that this permit covers NBBBI's current configuration, size, and operations only and that it is not contingent upon and does not cover NBBBI's proposed expansion or reconfiguration.

Response:

This permit covers areas identified in the application submitted to the Department. The proposed expansion identified in the master plan is not covered under this permit and will require a major modification by the Department and a public review period following a request from the facility.

Comment:

Please confirm that NBBBI is required to submit an application for permit modification to the Department if the facility expands or substantively changes its operations, practices, or procedures.

Response:

Statement is confirmed as noted above in addition to requirement in Condition G4.

Comment:

During the protracted permit application process, NBBBI failed to disclose that another business, Nichols Diversified Industries (NDI), operates at their Freeland, WA facility. NDI is not a ship builder. In the permit application, a NBBBI corporate officer certified that "the information submitted is, to the best of my knowledge and belief, true accurate and complete." Failure to disclose this information constitutes NBBBI providing false information in their permit application. What enforcement action is Ecology going to take for this violation?

Response:

The Department investigates claims of falsification of documents, however, a business not engaged in shipyard or boatyard type activities would not affect this permit. The Department does not comment on possible future enforcement actions.

Comment:

NBBBI misrepresented their hours of operation in its permit application. NBBBI operates 7 am to 8 pm, Monday through Saturday.

Response:

So noted. The Department will investigate this claim. This does not change the conditions of the permit, however, it does affect the reporting requirements.

Comment:

Page 4, Summary of Permit Report Submittals. The due dates for two of the deliverables in this table do not match the schedule presented on page 22 of the fact sheet. The due date for item S11. Hydrogeologic Investigation Scope of Work should be September 7, 2005, and the due date for the Hydrogeologic Investigation Evaluation Report should be December 15, 2006.

Response:

The Department concurs. The permit has been modified to reflect this change.

Comment:

Page 5, Section S1, second paragraph. Rinse water from yard cleaning and deck and hull cleaning and other processes could be as contaminated as pressure wash water. A requirement for sampling and characterizing this waste stream by NBBBI is necessary to ensure that this waste stream is conveyed to an appropriate treatment process and outfall.

Response:

This waste stream has been characterized over the last 5 years under the old permit and for the application process. The permit has been modified to prohibit this waste water from discharging to surface water.

Comment:

Page 5, Section S1, last bullet; Section G1.D; and G3.B. NBBBI's current permit and this draft permit prohibit vessel repair and construction type activities on the cradle, crawler, and railway. In a supplemental permit application from NBBBI to Ecology dated October 7, 2004 signed by Bryan Nichols, Mr. Nichols states "No fabrication or repair work is done on the cradle, on the crawler, or over the water." Bryan Nichols repeated this claim to Donna Ortiz de Anaya, Ecology permit writer, during a telephone conversation on June 30, 2005. Mr. Nichols' statements are false and misrepresent process knowledge Mr. Nichols knows to be true. In an email from Bryan Nichols to Donna Ortiz De Anaya dated July 5, 2005, Mr. Nichols states, regarding construction of the X-craft, "Work continued on the vessel while the cradle was under the vessel. I checked with our paint crew and some of the work included wet blasting and roll-on painting." In addition, FoHH provided photographic documentation to Ecology of X-craft construction on the cradle. Some of the photographs are available on NBBBI's own website. <http://www.nicholsboats.com/images/Construction/X-Craft/JAN05/2yard%20overview%20Feb%2005.JPG>. FoHH emailed copies of these photographs to the Department, as well as a photograph showing the cradle (I-beams and wooden supports) in the water in Holmes Harbor after the X-craft launch.

NBBBI violated their current permit and knowingly provided false and misleading information in their permit application. This violates Section G1.D (Certifications) and G3.B (Permit Actions) of the General Conditions. What enforcement actions is Ecology taking against NBBBI for these permit violations and for knowingly providing false information on their permit application?

Because NBBBI performs construction work on vessels on the cradle, a NPDES permit is required for this facility.

Response:

Condition S1 in this permit clearly prohibits boatyard type activities while working on or over the cradle, crawler, and railway.

Activities which may **not** be conducted on the cradle, crawler, or railway include: pressure washing or blasting of hulls, painting and coating of hulls and underbelly of catamarans, engine and propulsion system repair and replacement, hull repair, joinery, bilge cleaning, fuel and lubrication system repair and replacement, welding and grinding of hull, buffing and waxing, marine sanitation device (MSD) repair and replacement, and other activities necessary to maintain a vessel. This definition extends to mobile facilities as well.

Activities which may be conducted on the cradle, crawler, or railway include: engine repair or maintenance within the engine space without vessel haul-out, topside cleaning, detailing and bright work, electronics servicing and maintenance, MSD servicing and repair that do not require haul-out, vessel rigging, minor repairs or modifications to the vessel's superstructure.

Carpentry and finishing work done within the vessel is allowed.

Comment:

Page 6, Section S2. NBBBI expanded its impervious surface work area, significantly increasing the volume of waste water entering the treatment system, without applying for a modification to their existing waste discharge permit. As a result of this illegal expansion, there are frequent overflows from the infiltration basin to the wetland which is hydrologically-connected to Holmes Harbor. To protect the water quality of the wetland and Holmes Harbor, storage tanks with sufficient capacity to contain treated waste water until analytical results are available to demonstrate compliance with Outfall #1 criteria need to be installed.

If the permanent treatment system does not rely on the existing infiltration basin to capture overflow, NBBBI must be required to remove the interim infiltration basin and restore the wetland after the permanent system is installed. This requirement needs to be added to the schedule in Section S12.

Response:

This permit has been modified to prohibit overflows of process water to surface water. This permit does not authorize discharges to surface water. Condition S12 requires NBBBI to increase their storage capacity to facilitate infiltration and minimize overflows. In addition, NBBBI is required to collect and haul any discharges of process water from the infiltration basin and no seeps of process water through the basin are allowed. This permit does not address future actions of land management regarding the wetlands and the infiltration basin.

Comment:

Page 8, Section S2.D, first sentence. Define "infrequent."

Response:

This permit has been modified to eliminate that sentence as this permit does not authorize discharges to surface water.

Comment:

Page 8, second paragraph. NBBBI claims that overflows do not occur during business hours. To protect the water quality of the wetland and Homes Harbor, an alarm system with telemetry to notify NBBBI of overflows at all times needs to be installed. Furthermore, sample data for overflows entering the wetland or Holmes Harbor should be compared to surface water quality criteria, not ground water criteria.

Response:

Overflows from the infiltration basin of process water to surface water are prohibited in this permit. Stormwater overflows to surface water are authorized and regulated under the General Stormwater Permit. The overflows of storm water cannot violate surface water quality standards.

Comment:

Page 11, Section S3.E.1. Quantify “immediately.”

Response:

Condition E.1. As soon as possible.

Condition E.3. Within 24 hours.

Comment:

Page 12, Section S4.A.3. The O&M Manual must include management plans and procedures for the structural controls designed to prevent marine water intrusion into the infiltration basin. These structural controls must be installed by September 15, 2005. A new or updated O&M Manual must be submitted to the Department within 30 days after the upgrades are completed (by October 15, 2005.) This requirement needs to be added to Section S12.

Response:

The Department is requiring NBBBI to meet Condition S12 which includes an upgrade to the current design to prevent run-on of tidal marine water by September 15, 2005. Based on all the changes expected to take place in the next year at the facility, the Department concurs and the permit has been modified to require an updated manual by September 30, 2006. The manual is required to be updated annually.

Comment:

Page 12, Section S4.A.4. The O&M Manuals for the interim and permanent systems should include the requirement and procedures for daily sweeping and collection of process wastes.

Response:

Those requirements are addressed in the Stormwater Pollution Prevention Plan, Condition S13.

Comment:

Page 12, Section S4.B. NBBBI must notify the Department of releases due to flows greater than 10-year, 24-hour storm events so that the magnitude of the storm event can be verified.

Response:

This is already required under Section S2D.

Comment:

Page 14, S4.C.1. During rain events, surface water runs off the NBBBI property into the catch basin on Shoreview Drive which discharges directly into Holmes Harbor. How does Ecology propose to enforce the permit requirement in this paragraph for this discharge?

Response:

NBBBI has informed the Department that this pipe has been sealed off and no longer discharges to Holmes Harbor. Stormwater to surface water discharges are authorized under the Stormwater General Permit as this permit cannot authorize discharges to surface water.

Comment:

Page 14, S5. Does the Department's Solid Waste Program regulate testing or disposition of infiltration basin soils? Does this waste stream need to go to a permitted solid waste facility?

Response:

Yes, the Solid Waste Section in Ecology will be involved in the process. NBBBI is required to submit the Solid Waste Plan for approval by the Department. During the review of the plan, both the Hazardous Waste and the Solid Waste Sections within Ecology will review the plan. The plan must include a characterization of the waste to ensure proper disposal. A determination following testing of the material and requirements from Ecology will conclude the fate of the waste material.

Comment:

Page 15, S6.B. Sandblasting and painting generally are not conducted in enclosed buildings because vessels are longer and taller than existing structures. Furthermore, tarps are ineffective for controlling dust, paint spray, and other fugitive emissions. NBBBI must obtain a variance to exceed the 35' shoreline building height restriction and the 40' upland building height restriction in Island County. It is unlikely that NBBBI can obtain a variance because Island County code states that 'the granting of the variance shall be consistent with the purpose and intent of this Chapter and conditions will be imposed to ensure compatibility with surrounding permitted uses.' Under Washington law, "shall" is to be construed with mandatory meaning. Surrounding permitted uses include residential uses. There are no conditions the Department of Ecology or Island County can impose to bridge the gap between industrial and residential uses in this area.

The 1983 Final Findings of Fact, Conclusions of Law & Order in Shoreline Hearings Board No. 83-6 on pg 16 paragraph 6 b. states "All fabrication buildings, existing and proposed, shall be enclosed structures." It is obvious that these conditions were established to control the noise, light, glare, pollution and airborne particulates. Ecology must require NBBBI to conduct sandblasting and painting in enclosed facilities only.

Response:

The Department has verified that properly implemented tarps do protect water quality. Condition S6B requires NBBBI to confine dust and overspray to the maximum extent feasible. The permit has been modified to include language protective of stormwater vulnerable to rooftop contamination. Regulations concerning fabrication buildings are outside the scope of this permit.

Comment:

Page 16, S6.C. How will Ecology verify that NBBBI has personnel trained to cleanup spills? What proof of training does NBBBI need to provide to Ecology?

Response:

The Department does not routinely verify the training plan. The Department verifies the Stormwater Pollution Prevention Plan through mandatory reporting requirements in the permit and periodic inspections, at least one which will occur within the first year following permit issuance.

Comment:

Page 18, S6.J. Specifically when is NBBBI required to provide proof that they have developed and implemented a program to educate employees, contractors, and customers and what proof is required?

Response:

The Department does not require proof.

Comment:

Page 19, S7.C. A new or updated Solid Waste Control Plan should be submitted to the Department by August 15, 2005. The plan should address disposition of the infiltration basin soils, which must be changed out and disposed no later than September 21, 2005.

Response:

The Department concurs, and the permit has been modified to reflect a reasonable timeline to update the Solid Waste Control Plan. The submittal date for the Solid Waste Control Plan has been changed to October 31, 2005.

Comment:

Page 19, S8. A back-up power generator must be required to prevent overflow of the treatment vault during power outages.

Response:

NBBBI is proposing to have a storage structure onsite prior to the wet season that would hold five times the volume that the vault is currently capable of handling. This system would protect the vault in the event of a power outage.

Comment:

Page 19, S9. NBBBI must demonstrate that their bioswale has adequate capacity to contain and treat storm water.

Response:

The Department has verified that NBBBI is authorized to discharge storm water to surface water. Roof drains and parking lot stormwater is allowed to discharge to Holmes Harbor without treatment under current Department regulations. Discharging to the bioswale is additional protection for water quality.

Comment:

Page 19, S9. The permit requires NBBBI to construct a barrier to prevent run-on of tidal marine water into the shipyard, infiltration basin and in the storm water collection system by September 15, 2005. Any and all local, state or federal permits required to perform work within the wetland to construct a barrier will be obtained by NBBBI from the appropriate agency prior to commencement of any construction. Copies of said permits will be sent to Donna Ortiz de Anaya at the Department of Ecology Northwest Regional Office by certified mail within 15 days of issuance of said permits and prior to commencement of any construction.

Response:

Island County has responded to the draft permit and expects to review the plans. NBBBI is responsible for acquiring all appropriate permits prior to construction.

Comment:

Page 20, S10. NBBBI must review its Spill Control Plan at least annually and submit updates to the Department, therefore, Spill Control Plan revisions and updates must be received by Ecology no later than one year after the permit issued date.

Response:

The Department concurs. The permit has been modified to change the date to August 2006.

Comment:

Page 22, S13. Will the Department advertise and make the SWPPP and BMPs, which are due November 1, 2005, available for public review and comment?

Response:

The public may request and review the SWPPP following submittal.

Comment:

Page 19, S9. How many violations, exceedances, or overflows will Ecology tolerate before NBBBI is ordered to shut down the interim system and develop alternate means of collecting and treating waste water until the permanent system is operational?

Response:

The Department does not comment on projected enforcement actions. Changes have been made to the draft permit that prohibit discharges of process water to surface water.

Comment:

Page 21, S12. Verify the date by which NBBBI is required to change out the soils in the interim infiltration basin.

Response:

Condition S5. Management of Infiltration Basin Soils is detailed in the Soil Management Plan.

Comments on Fact Sheet

Comment:

Page 5, History. The integrity of NBBBI's stormwater collection system needs to be verified. When will this be completed?

Response:

The hydrogeologic investigation will address the stormwater collection system.

Comment:

Page 6. Quantities and volumes reported in NBBBI's permit application are out-of-date or missing. How much sandblasting grit was used since 2003? How much water does wet blasting generate? How is it collected? Is the Bobcat sweeper an effective way to collect wet blasting waste grit?

Response:

NBBBI has sent in addendums to their application through letters to the Department. The Factsheet has been updated to reflect the updates.

Comment:

Page 7. Is the information on the average number and type of vessels provided in the permit application still accurate?

Response:

The current fact sheet has been updated to reflect changes made by NBBBI.

Comment:

Page 7. How will Ecology verify that no pressure washwater reaches the treatment system? Is all work done on impervious surfaces with no cracks or voids? Is the wastewater collection system a tight-line system?

Response:

Pressure washing is currently done in an isolated area with a separate pad and the waste water is hauled offsite.

Comment:

Page 7. The marine rail system will also likely require cross bracing.

Response:

This comment is beyond the scope of the permit.

Comment:

Page 8, paragraph 4. How frequently is there marine water intrusion into the work yard and treatment vault because of high tides?

Response:

NBBBI has not reported marine water intrusion for the last 5 years.

Comment:

Page 9. How did Ecology verify NBBBI's reported volumes of 35,200 gpd and 22,000 gpd (average)?

Response:

Those were reported volumes certified in the permit application.

Additional Comments from Friends of Holmes Harbor:

Comment:

In an email response to a request for information from Donna, Bryan Nichols stated that NBBBI places large vessels on the cradle over 30 days prior to launching and then continues to work on the vessel on top of the cradle until they launch the vessel and cradle into Holmes Harbor. Bryan Nichols' email (email thread attached) states that NBBBI has done this for numerous years and plans to continue doing this. This is not only a violation of their current permit; but this type of work requires NBBBI to have an NPDES permit. It is illegal for NBBBI to continue discharging to surface water under a State Waste Discharge Permit.

Response:

This permit clearly prohibits shipyard type activities from occurring on or over the cradle, crawler, and railway. This permit prohibits surface water discharges of process water. The Department does not project enforcement actions.

Comment:

Launching of the cradle into the harbor significantly increases the potential for pollution to enter Holmes Harbor. The Department of Ecology must conduct a comprehensive investigation of sediment in Holmes Harbor to determine the nature and extent of sediment contamination and the damage to aquatic and benthic organisms resulting from releases from the NBBBI facility. The investigation will require characterization of background conditions as well as sediments near NBBBI to fully determine the nature and extent of contamination attributable to the NBBBI facility.

Response:

This facility has conducted most of their operation on dry land instead of in water. While potential exists when a drydock or cradle is used to transport a vessel from land to water, most shipyards perform all of the work on those platforms. NBBBI does most of the work over the concrete pad at their facility. While the cradle has been utilized for the last month or so of the process, the potential has been minimized. The Department is using best professional judgment and has determined that the potential for contamination of sediments in Holmes Harbor related to past work performed on a cradle is low. This permit prohibits shipyard-type activities on the cradle, crawler, and railway.

Comment:

Since NBBBI chooses to disregard permit requirements, Ecology should conduct unannounced inspections, on at least a quarterly basis, to verify that operations are conducted within the limits of the permit.

Response:

Ecology may perform unannounced inspections at any time.

Comment:

Since Ecology is allowing NBBBI to continue to commingle process water and storm water, the Industrial Stormwater General Permit is not applicable to this facility. Either NBBBI must immediately cease all discharges to surface water or Ecology needs to order NBBBI to stop work until an NPDES permit is issued.

Response:

The permit has been modified to prohibit discharges of process water to surface water. This permit does not authorize discharges to surface water.

Comments from People for Puget Sound

Thank you for the opportunity to comment on the State Waste Discharge permit for Nichols Brothers Boat Builders. The project is located in Holmes Harbor, which has several fish and wildlife conservation areas including wetlands, eelgrass beds and herring and smelt spawning areas, as well as recreational and commercial shellfish beds.

People for Puget Sound is a citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits. We focus on water quality and habitat, advocating that the State of Washington devote more resources to the protection and restoration of the Sound. We are currently engaged in a major effort to save the 2000 miles of Puget Sound's shoreline through advocacy, education and habitat restoration and protection.

This property is a highly contaminating site that is not adequately protective of human health (nearby drinking water wells) and wildlife health. This site should be regulated under a site-specific NPDES permit rather than under a State Waste Discharge permit. Stormwater and wastewater are commingled and are flowing into the ground, into a wetland and into Puget Sound.

We strongly support Puget Soundkeeper Alliance's comment letter, which mentions a number of important water quality issues. In addition, we have the following comments.

Comment:

Sensitive wetland. Puget Sound has lost over 90% of its wetlands due to filling and development over the past century. The remaining wetlands must be protected as a high priority. Wetlands provide critical ecological functions including cleaning water, aquatic nursery habitat and bird habitat. The wetland that is adjacent to this site must be protected from the impacts of this site. It appears that the infiltration basin for wastewater from this site is constructed in a Class A wetland. This siting is unacceptable to People For Puget Sound because contaminated water is being infiltrated too close to a sensitive wetland. The fact sheet does not mention this illegal siting of the infiltration basin.

Response:

Siting of a wetland is beyond the scope of this permit. Island County is the proper authority to regulate wetland and shoreland issues. Your comment will be shared with Island County. This permit requires NBBBI to procure all necessary permits prior to construction.

Comment:

Treatment. The fact that the soils in the infiltration pond have to be cleaned out so often indicates that this site requires a system that cleans the stormwater more thoroughly before it reaches the infiltration bed. The treatment system includes settling and filtration through fabric filters. For a project using toxic chemicals in the process (both sandblasting and painting) and that includes a number of toxic chemicals used on-site, more filtering should be required such as carbon filters. This issue is of serious concern given the proximity of the wetland, drinking water wells and sensitive habitat in Holmes Harbor.

Response:

This permit requires NBBBI to perform a hydrogeologic investigation and use an approvable engineered design to meet water quality criteria for discharges to ground. This permit does not authorize discharges to surface water.

This permit also requires NBBBI to increase the storage capacity of their treatment system. This will allow increased settling of contaminated particulates prior to the current treatment system. This permit additionally requires an upgraded treatment system which the Department will approve.

Comment:

Groundwater Monitoring. Given that drinking water wells are within a sensitive zone at this site, groundwater and infiltration bed and soils monitoring should include toxic contaminants, such as metals and organic chemicals, which are known to be used on this property. These pollutants that appear to be entering Holmes Harbor must be monitored and stopped. The site location in Holmes Harbor is a “shoreline of the state” (to minus 4.5 feet MLLW) and “shoreline of statewide significance” (waterward of extreme lower low water).

Response:

This permit requires NBBBI to monitor for those parameters typical of shipyard wastewater including copper, chromium, lead, and zinc prior to discharging to ground waters of the state. This permit requires NBBBI to meet effluent limits which are more stringent than groundwater standards.

Comment:

Cradle Work. Although the draft fact sheet states that no work is done on boats while on the cradle, the Holmes Harbor community group has stated that they have photos to the contrary. It is unacceptable for work to be allowed on the cradle violating permit requirements.

Response:

The Department concurs, and this permit explicitly prohibits shipyard-type activities conducted on or over the cradle, crawler, and railway.

Comment:

Current Work. People For Puget Sound requests that this property be brought up to clean water standards immediately. Work continues at this site even though it is unpermitted. As noted by Puget Soundkeeper Alliance, Nichols Brothers should be held accountable for its past expansion (as well as its past discharges to surface waters), and should be required to meet modern standards now. Extensive impervious surfaces that have been created in the past five years lead to unacceptable overflows of polluted water to Holmes Harbor and the wetland.

Response:

This permit has been modified to prohibit process water from discharging to surface water. NBBBI must upgrade the current system to increase the storage capacity in order to reduce stress on the basin. In addition, all overflows and seeps of commingle process and stormwater are prohibited.

Comment:

Please make People For Puget Sound a party of record for this site.

Response:

So noted. People for Puget Sound have been added as a party of record for this permit.

Comments from Whidbey Environmental Action Network

Comment:

NBBBI's current stormwater system is actively violating state water standards by actively discharging to surface marine waters. As WDOE is aware, the water within the infiltration basin (pond) grossly fails to meet state standards for key contaminants, such as copper. The infiltration basin is discharging directly into the adjacent wetland which has direct surface flow into Holmes Harbor. Additionally, vertical separation between the bottom of the infiltration basin and groundwater is far below requirements of both the existing and proposed permit.¹ All available evidence indicates that the "groundwater" beneath the basin is hydrologically-connected to the surface marine waters of Holmes Harbor and is therefore subject to surface water standards.² The predictable, regular, and periodic flooding during high tides and storm surges around the infiltration basin also assures movement of these pollutants into marine surface waters.

Were the quality of the water discharged by NBBBI reasonably near surface water standards, the violation might be considered "merely" technical and the timeline for compliance proposed in the draft permit would be understandable. However, the contaminants in these discharges are literally orders of magnitude higher than allowed. This active, ongoing pollution of Holmes Harbor needs to end as soon as possible. Consequently, we urge WDOE to require immediate corrective action—on an emergency basis if need be—to seal the sides and bottom of the infiltration basin and end the ongoing pollution.

Response:

The current permit and the new final permit require NBBBI to meet groundwater criteria or more stringent criteria, based on the pollutant of concern. The Department disagrees that the newly designed infiltration basin will be less than adequate. The Department suspects but has not determined that there is a hydrologic connection between the infiltration basin and the wetlands surrounding the basin. This permit requires a hydrologic investigation followed up with an engineered design that must be approved by the Department prior to implementation. This permit further prohibits discharges of process water to surface water through seeps and overflows of the infiltration basin. In addition, NBBBI is required to increase the capacity of their treatment system so as to maximize treatment and infiltration of the basin.

Comment:

If the stormwater system is designed using the standard NOAA isoplethials, it will underestimate the magnitude of design storms. Island County's hydrogeologist has much better (more site-specific) information and this is what should be used for design purposes.

Response:

The Department has noted that Doug Kelly of the Co-op Extension Service for Freeland may have more site-specific weather data for this facility. This will be considered during the review process of the engineered design.

¹ The current separation is so far below the requirements of the current permit that it appears the existing wastewater system has been in continuous violation since its construction.

² The vertical separation is so minimal that we strongly suspect that the connection is two-fold, both via shallow "groundwater" and by very shallow subsurface connection to the surface water in the wetland.

Comment:

Given NBBBI's longstanding record of violations of implementation, monitoring, and reporting requirements, monitoring should be performed by a third party reporting independently to Ecology.³ WDOE should also include in the permit a commitment by WDOE to perform quarterly unannounced inspections, including sampling.⁴

Response:

The Department does not require permittees to have third party reporting. The Department has committed to inspecting the facility within the first year following permit issuance.

Comment:

The proposed allowance of vault filter system bypasses for 6-month design storms negates the effect of designing the stormwater system for 10-year, 24-hour storms. This is designing for pollution. The vault filter system should also be upgraded to the 10-year, 24-hour storm design standard.

Response:

The permit has been modified to emphasize the requirement to upgrade the capacity of the current treatment system. This permit gives NBBBI a Compliance Schedule to meet state water quality criteria based on the findings of the hydrogeologic investigation. Condition S4B requires treatment and disposal up to the 10-year, 24-hour design storm.

³ For example, the first inspection made by Ecology after construction of the vault filter system revealed that it was being operated without the bag filters actually being installed.

⁴ No parties outside of Ecology, including elected officials and Island County personnel, should be apprised of the timing of these inspections.

Comments from Island County

Comment:

Island County is very appreciative of the opportunity to provide comment on the Nichols Brothers Boat Builders, Inc. (NBBBI) *DRAFT* Wastewater Permit. As you may or may not be aware, Island County is currently reviewing a “Master Permit Application” (MPA) for the NBBBI operation also in compliance with the joint Notice of Penalty and Order⁵ from Island County and the Department of Ecology. Island County accepted public comments for the MPA during a 49-day period running from December 1, 2004, through January 18, 2005, following this process the County along with other reviewing agencies have requested additional information on the proposal prior to issuance of a final SEPA determination. Stormwater/wastewater treatment is one of the issues that the County is requesting additional information on before moving forward with a SEPA determination, the DOE *DRAFT* Wastewater Permit is helpful in completion of this process. Within the MPA, NBBBI have proposed changes to the location of buildings, parking areas, extension of hours of operation and an alternative launch system to the current “crawler” that will not involve future dredging within Holmes Harbor.

It is our understanding that the DOE *DRAFT* Wastewater Permit is intended to formalize NBBBI’s existing operation by defining conditions and best management practices (BMP’s) to ensure that wastewater is treated using all known, available, and reasonable treatment (AKART).

During the MPA-review, Island County has requested and received addition information specifically defining both the use and physical expansion requested by the applicant. Physical expansion in excess of the existing operation is clearly defined within the MPA-application by the applicant as follows:

“The only area of physical expansion will be the 3.2 acres of land to the east of our (NBBBI) current parking lot. We (NBBBI) will lease the land from Holmes Harbor Properties, LLC for a new parking lot...As shown on the Site Plan for Phase 1, our current storage will become a production area and our current parking lot will become a storage and production area”.⁶

NBBBI has further defined the proposed uses within these areas within the following statement also within the MPA-application:

“We (NBBBI) currently have 5.5 acres of land designated as storage and parking that we will re-designate as production and storage space. Of this 5.5 acres, 2.8 acres will be used for production only and 1.4 acres for a combination of production and storage. The remainder of the land, 1.3 acres, will be a combination of parking, driveway and landscaping”.⁷

It is Island County’s interpretation of proposed conditions of approval for the DOE *DRAFT* Wastewater Permit, as described within the “Fact Sheet”⁸, that the permit is intended to provide appropriate conditions and requirements for current operations. However, the permit also appears to provide a mechanism for future expansion subject to compliance with listed standards and construction of necessary wastewater infrastructure prior to the physical expansion. Island County believes that an appropriate mechanism for future flexibility in uses in relation to

⁵ Notice of Penalty & Joint Order #03SEANR-5565/COV 255/03

⁶ NBBBI-MPA SPR 387/04, Phase 1, 30-day submittal of additional information

⁷ NBBBI-MPA SPR 387/04, Phase 1, 30-day submittal of additional information

⁸ Under “Permit Status” page 11

wastewater management within the NBBBI yard is fundamentally important for both the applicant to meet the requirements of a dynamic market and a variety of projects as well as the County's review of the proposed MPA and balance of many issues to surrounding properties. As described in the paragraphs above, NBBBI actual expansion is relatively minor; however, with a clear distinction between "industrial" and "roof/parking area" runoff, the specifics of the expansion are important to design of wastewater treatment facilities.

Response:

The mechanism for expansion under this permit is a major modification of the permit which requires a request or a supplemental permit application with a site map identifying expansion locations and additional stormwater routing to the treatment system. There is a thirty-day public review required prior to the modification issuance.

Comment:

The *DRAFT* Wastewater Permit provides both short and long-term goals to the applicant to be incorporated into drainage infrastructure and yard operations. It is Island County's understanding that the current phase of the Wastewater Permit is intended to establish parameters that the applicant will need to show compliance within future engineered drawings and studies. Island County would like to provide the following comment that are more related to future designs and compliance with the listed conditions in order to move forward with MPA review:

In compliance with section S8 & S9 (separation of roof and parking lot runoff from production yard wastewater and the requirement of an engineering report for the new wastewater treatment system), Island County will be requesting these materials from the applicant to continue review of the applicants MPA.

Response:

So noted.

Comment:

In compliance with permit section S9 (prevention of tide water flooding potential), Island County will be requesting a preliminary design from the applicant during MPA review. The barrier will need to be constructed in a manner that will not interfere with the existing County right-of-way of Shoreview Drive.

Response:

So noted.

Comment:

In compliance with permit section S12 (completion of a hydrogeologic investigation), the Draft Freeland Comprehensive Drainage Plan prepared by Fakkema and Kingma dated May 2005 indicates an existing problem related to tidal influences in the subject area. Design of barriers should consider such information.

The Freeland Drainage Plan can be viewed by downloading a 20mb *.pdf file at the following website:

http://www.islandcounty.net/publicworks/Temp/FreelandDrainagePlan_Vol1.pdf

Response:

So noted and included in the formal permit process.

Comment:

After review of the *DRAFT* Permit, Island County believes that the BMP's defined within the permit adequately address handling of waste materials and provide sufficient protection to water quality of surrounding water bodies. As described above Island County concurs with providing NBBBI a clear distinction between treatment of "industrial" wastewaters as opposed to "non-industrial" uses such as parking areas and roof runoff. Island County is confident that current County code is sufficient in providing appropriate water quality treatment to non-industrial waste waters that will be incorporated into binding conditions of approval for NBBBI MPA and SEPA determination.

Response:

So noted.

Comments from Nichols Brothers Boat Builders, Inc. (NBBBI)

Comment #1:

Summary of Permit Report Submittals (page 4)

First submittal date for the Discharge Monitoring Report should be September 7, 2005

First submittal date for the Engineering Report should be March 1, 2007

First submittal date for the Hydrogeological Investigation – Scope of Work should be September 7, 2005

First submittal date for the Hydrogeological Investigation – Evaluation Report should be December 15, 2006

First submittal date for the Best Management Practices/Pollution Prevention Plan should be March 15, 2007

Response:

So noted. The permit has been modified to reflect changes in submittal dates.

Comment #2:

Special Condition S1 – Discharge Limitations (page 5), Last Bullet

Vessel repair, fabrication and construction activities conducted while the vessel is on the crawler or cradle should be allowed when the vessel and cradle/crawler are located wholly within the boundaries of the NBBBI facility and within the zone of capture of the waste water treatment system. The cradle is sometimes placed on the crawler and then the vessel is placed on the cradle; at other times, depending on the vessel, the vessel is placed on the cradle and then the crawler is slid under the cradle. Appropriate BMPs should be implemented and in-place prior to and during any repair, fabrication or construction activities to ensure that the vessel and cradle/crawler are clean prior to leaving the boundaries of the NBBBI facility and the zone of capture of the waste water treatment system. Vessel repair, fabrication and construction activities should only be prohibited once the vessel and cradle/crawler leave the boundaries of the NBBBI facility and the zone of capture of the waste water treatment system.

Response:

Actively working on the cradle, crawler, or railway has the potential to pollute surface waters of the state once the vessel is launched. This permit cannot authorize discharges to surface water. All activities which may **not** be conducted on the cradle, crawler, or railway include: pressure washing or blasting of hulls, painting and coating of hulls and underbelly of catamarans, engine and propulsion system repair and replacement, hull repair, joinery, bilge cleaning, fuel and lubrication system repair and replacement, welding and grinding of hull, buffing and waxing, marine sanitation device (MSD) repair and replacement, and other activities necessary to maintain a vessel. This definition extends to mobile facilities as well.

Activities which may be conducted on the cradle, crawler, or railway include: engine repair or maintenance within the engine space without vessel haul-out, topside cleaning, detailing and bright work, electronics servicing and maintenance, MSD servicing and repair that do not require haul-out, vessel rigging, minor repairs or modifications to the vessel's superstructure.

Carpentry and finishing work done within the vessel is allowed.

Comment #3:

Special Condition S8 – Engineering Report (Facility Plan) for New Wastewater Treatment System (page 19), 1st Paragraph, Last Sentence

The date should be March 1, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Response:

So noted

Fact Sheet for State Waste Discharge Permit ST-7396

Comment #4:

Background Information – Vessel Transfers (page 6), 1st Paragraph, 5th Sentence

This sentence should be modified to indicate “No fabrication, repair, or construction work is done on the vessel while it is resting on the cradle *or crawler and outside the boundaries of the NBBBI facility and the zone of capture of the waste water treatment system.*”

Response:

Please see response above to comment #2.

Comment #5:

Treatment System Design (page 8), 4th Paragraph, Last Sentence

When flow occurs it is noted, and the flow is tested in accordance with Special Condition S2 of the State Waste Discharge Permit. However, the flow is not metered.

Response:

The fact sheet has been modified to: “The flow will be tested.”

Comment #6:

Treatment System Design (page 8), 5th Paragraph, Second Sentence

NBBBI has agreed to upgrade their stormwater treatment facility to accommodate the 10-year, 24-hour storm event. However, in this context, comparing the NBBBI facility to the other shipyards isn’t appropriate since the other shipyards do not have on-site treatment and disposal systems. They discharge their stormwater to municipal sewer systems (where it subsequently goes to municipal treatment systems). This is not an option to NBBBI as such a system is not available to them. Therefore, the second sentence should be deleted.

Response:

The Department notes that this is AKART for the shipyard category. Since NBBBI performs similar-type activities as other shipyards, they shall be held to the same standard.

Comment #7:

Treatment System Design (page 9), 2nd Paragraph

NBBBI agreed to evaluate these potential improvements to the existing treatment system, but not to necessarily do all of them. Accordingly, either the text should be modified to indicate this, or the 2nd and 5th bullets should be deleted.

Response:

So modified.

Comment #8:

Treatment System Design (page 11), 1st Paragraph, 3rd Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Response:

So modified.

Comment #9:

Treatment System Design (page 11), 1st Paragraph, Last Sentence

This sentence should be modified to indicate that “....*if needed*, the engineering report will include a barrier prohibiting seeps.....” since the new infiltration basin may not have built up banks.

Response:

So modified.

Comment #10:

Treatment System Design (page 12), 4th Paragraph, Last Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Response:

So noted.

Comment #11:

Proposed Permit Limitations – Storm Water and Rinse Water (page 17), 1st Paragraph, 1st Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Response:

So noted.

Comment #12:

Other Permit Conditions – Overflow Discharge to Holmes Harbor and Adjacent Wetlands (page 20), 2nd Paragraph, Last Sentence

The last sentence should be deleted; it conflicts with the first sentence in the paragraph, and the current system was only designed for the 6-month, 24-hour design storm.

Response:

This is a moot point as the new final permit does not authorize discharges to surface water. The fact sheet has been modified.

Comment #13:

Other Permit Conditions – Engineering Report Required for Treatment System Upgrade (page 21), Last Paragraph, Last Sentence

The date should be March 1, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Response:

So noted.

Comment #14:

Other Permit Conditions – Compliance Schedule–New Design to Meet Water Quality Standards (page 22), 1st Paragraph, 1st Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Response:

So noted.



**ISLAND COUNTY
PLANNING & COMMUNITY DEVELOPMENT**

Phillip Bakke, AICP
Director

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COMMENTS SUBMITTED VIA EMAIL & 1ST CLASS MAIL

NBBBI *DRAFT* WASTEWATER TREATMENT PERMIT (ST-7396)

July 8th, 2005

Water Quality Permit Coordinator
Department of Ecology
Northwest Regional Office
390 – 160th Ave SE
Bellevue, WA 98008-5452

Attn: Tricia Miller

Island County is very appreciative of the opportunity to provide comment on the Nichols Brothers Boat Builders Inc. (NBBBI) *DRAFT* Wastewater Permit. As you may or may not be aware Island County is currently reviewing a “Master Permit Application” (MPA) for the NBBBI operation also in compliance with the joint Notice of Penalty and Order¹ from Island County and the Department of Ecology. Island County accepted public comments for the MPA during a 49-day period running from December 1st, 2004 through January 18th, 2005, following this process the County along with other reviewing agencies have requested additional information on the proposal prior to issuance of a final SEPA determination.

Stormwater/Wastewater treatment is one of the issues that the County is requesting additional information on before moving forward with a SEPA determination, the DOE *DRAFT* Wastewater Permit is helpful in completion of this process. Within the MPA, NBBBI have proposed changes to the location of buildings, parking areas, extension of hours of operation and an alternative launch system to the current “crawler” that will not involve future dredging within Holmes Harbor.

It is our understanding that the DOE *DRAFT* Wastewater Permit is intended to formalize NBBBI’s existing operation by defining conditions and Best Management Practices (BMP’s) to ensure that wastewater is treated using all known, available, and reasonable treatment (AKART).

During the MPA-review Island County has requested and received addition information specifically defining both the use and physical expansion requested by the applicant. Physical expansion in excess of the existing operation is clearly defined within the MPA-application by the applicant as follows:

¹ Notice of Penalty & Joint Order #03SEANR-5565/COV 255/03

*“The only area of physical expansion will be the 3.2 acres of land to the east of our (NBBBI) current parking lot. We (NBBBI) will lease the land from Holmes Harbor Properties, LLC for a new parking lot...As shown on the Site Plan for Phase 1, our current storage area will become a production area and our current parking lot will become a storage and production area”.*²

NBBBI has further defined the proposed uses within these areas within the following statement also within the MPA-application:

*“We (NBBBI) currently have 5.5 acres of land designated as storage and parking that we will re-designate as production and storage space. Of this 5.5 acres, 2.8 acres will be used for production only and 1.4 acres for a combination of production and storage. The remainder of the land, 1.3 acres, will be a combination of parking, driveway and landscaping”.*³

It is Island County’s interpretation of proposed conditions of approval for the DOE *DRAFT* Wastewater Permit, as described within the “Fact Sheet”⁴, that the permit is intended to provide appropriate conditions and requirements for current operations. However, the permit also appears to provide a mechanism for future expansion subject to compliance with listed standards and construction of necessary wastewater infrastructure prior to the physical expansion. Island County believes that an appropriate mechanism for future flexibility in uses in relation to wastewater management within the NBBBI yard is fundamentally important for both the applicant to meet the requirements of a dynamic market and a variety of projects as well as the County’s review of the proposed MPA and balance of many issues to surrounding properties. As described in the paragraphs above, NBBBI actual expansion is relatively minor; however with a clear distinction between “industrial” and “roof/parking area” runoff, the specifics of the expansion are important to design of wastewater treatment facilities.

The *DRAFT* Wastewater Permit provides both short and long-term goals to the applicant to be incorporated into drainage infrastructure and yard operations. It is Island County’s understanding that the current phase of the Wastewater Permit is intended to establish parameters that the applicant will need to show compliance within future engineered drawings and studies. Island County would like to provide the following comment that are more related to future designs and compliance with the listed conditions in order to move forward with MPA review:

1. In compliance with section S8 & S9 (separation of roof and parking lot runoff from production yard wastewater and the requirement of an engineering report for the new wastewater treatment system), Island County will be requesting these materials from the applicant to continue review of the applicants MPA.
2. In compliance with permit section S9 (prevention of tide water flooding potential), Island County will be requesting a preliminary design from the applicant during MPA review. The barrier will need to be constructed in a manner that will not interfere with the existing County right-of-way of Shoreview Drive;

² NBBBI-MPA SPR 387/04, Phase 1, 30-day submittal of additional information

³ NBBBI-MPA SPR 387/04, Phase 1, 30-day submittal of additional information

⁴ Under “Permit Status” page 11.

3. In compliance with permit section S12 (completion of a Hydrogeologic Investigation), the Draft Freeland Comprehensive Drainage Plan prepared by Fakkema and Kingma dated May 2005 indicates an existing problem related to tidal influences in the subject area. Design of barriers should consider such information.

The Freeland Drainage Plan can be viewed by downloading a 20mb *.pdf file at the following website.

http://www.islandcounty.net/publicworks/Temp/FreelandDrainagePlan_Vol1.pdf

After review of the *DRAFT* Permit, Island County believes that the BMP's defined within the permit adequately address handling of waste materials and provide sufficient protection to water quality of surrounding water bodies. As described above Island County concurs with providing NBBBI a clear distinction between treatment of "industrial" wastewaters as opposed to "non-industrial" uses such as parking areas and roof runoff. Island County is confident that current County code is sufficient in providing appropriate water quality treatment to non-industrial waste waters that will be incorporated into binding conditions of approval for NBBBI MPA and SEPA determination.

Sincerely,

Joe Burcar
Senior Planner, Island County Planning & Community Development

Smith & Lowney, p.l.l.c.

2317 east john street
Seattle, Washington 98112
(206) 860-2883, Fax (206) 860-4187

July 8, 2005

Water Quality Permit Coordinator
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

Re: Comments on Draft State Waste Discharge Permit No. ST-7396,
Nichols Brothers Boat Builders, Inc.

Dear Permit Coordinator:

We submit the following comments to the Washington State Department of Ecology on behalf of Puget Soundkeeper Alliance (Soundkeeper) -- a non-profit membership organization dedicated to protecting and restoring natural resources, particularly including the water resources of the State of Washington.

The following comments identify Soundkeeper's concerns with Ecology's approach to regulating the Nichols Brothers Boat Builders, Inc. facility, and with the proposed language of the reissued permit.

General Comments

1. The Department's decision to issue a State Waste Discharge Permit for the facility -- rather than an NPDES permit -- reflects an apparent determination that the facility does not discharge to surface waters (including wetlands). However, while purporting to prohibit most discharges to surface waters, the permit and fact sheet actually acknowledge three or four different surface water discharges: (1) discharges to hydrologically-connected groundwaters; (2) stormwater collection system overflows resulting from precipitation events exceeding the design storm; (3) seeps to wetlands; and (4) discharges resulting from marine intrusion. These discharges to surface waters cannot be authorized by a State Waste Discharge Permit.
2. Moreover, the facility's discharges to surface waters cannot be covered by the Industrial Stormwater General Permit (ISGP), because the facility's stormwater is commingled with process wastewater (*see*, Cond. S2A.). The facility's "process rinse water" (Fact Sheet at 7) is not stormwater, and cannot be considered "conditionally approved non-stormwater discharges" under the ISGP because it is contaminated by contact with the boat yard, vessel hulls and decks, and/or the crawler. As a result, the facility's commingled discharges of stormwater and process wastewater cannot be

Department of Ecology
Permit Coordinator
Page 2

authorized or covered by the ISGP. Ecology should issue an individual NPDES permit covering the facility, or notify the facility that all discharges to surface waters are unpermitted.

3. The matter is far from academic, because the draft permit only requires the facility to meet groundwater quality standards, rather than the far more stringent surface water quality standards applicable in Holmes Harbor.

Specific Comments

1. Discharge Limitations (Cond. S1, p.5) -- The permit should prohibit "all discharges" to Holmes Harbor and wetlands -- not merely discharges of pressure wastewater. If pressure wastewater will be specified, the permit should also prohibit all discharges of pressure wastewater to the stormwater treatment and subsurface infiltration system, as indicated by the Fact Sheet. In addition, with reference to the second, fourth, and fifth bulleted items, the permit should prohibit direct and indirect discharges to surface waters of pressure wash wastewater, bilge and ballast water, and wastewater from cooking, dish washing, showers, hydrotesting of piping system and portable steaming and maintenance shops.
2. Interim and Final Effluent Limitations (Conds. S1A.-S1C.) -- The draft permit does not specify when the final effluent limitations will become effective. These provisions are also unclear in other respects:
 - Are the "wastewater discharges to ground" covered by S1A different from discharges to the infiltration basin covered by S1B? If so, how; and where do these discharges take place?
 - Are the effluent limitations provided in S1B interim limitations?
 - With respect to S1C, when will the "characterization of the effluent" take place? Why wasn't an effluent characterization submitted as part of the facility's permit application? Further, it is unclear which (if any) of the deadlines identified in the Compliance Schedule (Cond. S12) applies to the effluent characterization.
3. Overflow to Holmes Harbor (Cond. S2.D.) -- The Permit indicates the permittee will not be required to prohibit seeps to wetlands from precipitation events exceeding the 10-year, 24-hour design storm. (Permit at 8.) As discussed above, the permittee should be informed that any discharges of pollutants to surface waters (including those before September 16, 2007, and those resulting from storms exceeding the design storm) are unpermitted discharges. Also, Condition S2.D identifies sampling and monitoring requirements for stormwater discharged to surface waters. These requirements should be contained in an individual NPDES permit rather than in this State Waste Discharge permit. In addition,

Department of Ecology
Permit Coordinator
Page 3

- NBBBI should be required to install an autosampler to sample any discharges from the overflow pipe that occur outside of regular business hours.
 - NBBBI should be required to measure or estimate the volume of any stormwater and/or rinse water discharged to surface waters through the overflow pipe.
 - NBBBI should be required to report any release to surface waters in writing.
 - Any discharges to surface waters should be subject to strict compliance with surface water quality standards.
4. Marine Water Inflow (Cond. S2E) -- any influx event should be reported to the Department in writing. In addition, the report should be submitted "within 24 hours" as specified in Permit Cond. S3.A -- not within 48 hours.
 5. Sampling and Analytical Procedures (Cond. S2F) -- the phrase "unless otherwise . . . approved in writing by the Department of Ecology (Department)" purports to allow the informal modification of permit terms. This language is impermissible, and has been disapproved by the Pollution Control Hearings Board.¹ Ecology should eliminate this language from its permit boilerplate.
 6. Management of Infiltration Basin Soils (Cond. S5.) -- The permit should identify the date by which the permittee is required to update the Soil Management Plan to be consistent with the 2005 Stormwater Management Manual for Western Washington. The date should be within twelve (12) months of permit issuance.
 7. Best Management Practices (Cond. S6.) -- the required identification and implementation of BMPs should be documented and included in the Pollution Prevention Plan (SWPPP) required by Cond. S13.
 8. Solid Waste Disposal / Leachate (Cond. S7B.) -- The permit should prohibit any discharge of leachate to surface waters and hydrologically-connected groundwaters. If the Department believes any such discharge may take place at the facility, the discharge should be covered by an individual NPDES permit containing appropriate protective provisions.
 9. Engineering Report (Cond. S8.) -- the May 1, 2007 date specified here is inconsistent with the March 1, 2007 date specified in the Compliance Schedule (Cond. S13).
 10. Upgrade of Current Wastewater System (Cond. S9) -- It appears that, despite the permittee's previous unauthorized site expansion which did not involve upgrading the stormwater treatment system to meet applicable modern standards, Ecology will only

¹ See, *Port of Seattle v. Ecology*, PCHB Nos. 03-140, 03-141, 03-142, available online at: <http://www.eho.wa.gov/searchdocuments/2004%20Archive/pchb%2003-140%20final.htm>

Department of Ecology
Permit Coordinator
Page 4

require the facility to satisfy the "six-month design storm" specified by the 1992 Storm Water Manual until the facility's *next* expansion. This is relaxation of modern standards is inappropriate. The permittee should be held accountable for its past expansion (as well as its past discharges to surface waters), and should be required to meet modern standards now.

11. Spill Plan (Cond. S10.) -- The deadline for submitting an updated spill control plan should be within twelve (12) months of permit issuance. There is no justification for giving the permittee nearly two years (until May 1, 2007) to update an existing plan.
12. Compliance Schedule (Cond. S12.) -- The compliance schedule should identify quarterly or semi-annual requirements for status reports detailing the permittee's satisfaction of the compliance schedule deadlines. In addition, the permit should require the submission of a Draft Engineering Report (Facility Plan) for the New Wastewater Treatment System within twelve (12) months of permit issuance.
13. Pollution Prevention Plan (Cond. S13) -- The Pollution Prevention Plan as described is a SWPPP, which should be identified as a required "Permit Report Submittal" on Permit page 4. The SWPPP should be submitted to the Department, and made available to the public. It is a key part of the facility's pollution control technology. In addition, as noted above, the SWPPP requirements should include the boatyard-specific Best Management Practices identified in Cond. S6.

In conclusion, Puget Soundkeeper Alliance appreciates Ecology's efforts to protect water quality. Soundkeeper urges the Department to fulfill its mandate to "maintain the highest possible standards to ensure the purity of all waters of the state" (WAC 173-216-020) by revising and strengthening the subject permit as discussed above.

Please provide Soundkeeper and the undersigned a copy of the Department's final decision. Thank you.

Very truly yours,

Smith & Lowney, P.L.L.C.

By: 

Richard A. Poulin
Of Counsel

Whidbey Environmental Action Network
Restoration Education Preservation
Box 53, Langley, WA USA 98260
Fax: (360) 579-4080 Phone: (360) 579-4202 e-mail: wean@whidbey.net

*Dedicated to the preservation and restoration of the native biological diversity
of Whidbey Island and the Pacific Northwest*

July 7, 2005

TO: Water Quality Permit Coordinator
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Email: tmil461@ecy.wa.gov
FROM: Steve Erickson
RE: Permit No. ST-7396
Nichols Brothers Boat Builders, Inc.

Whidbey Environmental Action Network (WEAN) requests that Department of Ecology hold a public hearing regarding the proposed waste discharge permit for Nichols Brothers Boat Builders, Inc. (NBBBI). WEAN is a nonprofit organization with approximately 400 member households. Many of our members live and recreate in the immediate vicinity of the NBBBI facility on Holmes Harbor and are directly affected by NBBBI's activities. NBBBI's past and present activities have been extremely controversial. Its current expansion proposal is extremely controversial and generated great concern within the community. For this reason, we believe it is appropriate and request that Department of Ecology hold a public hearing in the vicinity of the affected community concerning NBBBI's proposed waste discharge permit.

Below are our comments on the draft permit.

1. NBBBI's current stormwater system is actively violating state water standards by actively discharging to surface marine waters. As WDOE is aware, the water within the infiltration basin (pond) grossly fails to meet state standards for key contaminants, such as copper. The infiltration basin is discharging directly into the adjacent wetland which has direct surface flow into Holmes Harbor. Additionally, vertical separation between the bottom of the infiltration basin and groundwater is far below requirements of both the existing and proposed permit.¹ All available evidence indicates that the "groundwater" beneath the basin is hydrologically connected to the surface marine waters of Holmes Harbor and is therefore subject to surface water standards.² The predictable, regular, and periodic flooding during high tides and

¹ The current separation is so far below the requirements of the current permit that it appears the existing wastewater system has been in continuous violation since its construction.

² The vertical separation is so minimal that we strongly suspect that the connection is two-fold, both via shallow "groundwater" and by very shallow subsurface connection to the surface water in the wetland.

storm surges around the infiltration basin also assures movement of these pollutants into marine surface waters.

Were the quality of the water discharged by NBBBI reasonably near surface water standards, the violation might be considered “merely” technical and the timeline for compliance proposed in the draft permit would be understandable. However, the contaminants in these discharges are literally orders of magnitude higher than allowed. This active, ongoing pollution of Holmes Harbor needs to end as soon as possible. Consequently, we urge WDOE to require immediate corrective action - on an emergency basis if need be - to seal the sides and bottom of the infiltration basin and end the ongoing pollution.

2. If the stormwater system is designed using the standard NOAA isoplethials it will underestimate the magnitude of design storms. Island County’s hydrogeologist has much better (more site-specific) information and this is what should be used for design purposes.

3. Given NBBBI’s longstanding record of violations of implementation, monitoring, and reporting requirements, monitoring should be performed by a third party reporting independently to Ecology.³ WDOE should also include in the permit a commitment by WDOE to perform quarterly unannounced inspections, including sampling.⁴

4. The proposed allowance of vault filter system bypasses for 6-month design storms negates the effect of designing the stormwater system for 10-year 24-hour storms. This is designing for pollution. The vault filter system should also be upgraded to the 10-year 24-hour storm design standard.

³ For example, the first inspection made by Ecology after construction of the vault filter system revealed that it was being operated without the bag filters actually being installed.

⁴ No parties outside of Ecology, including elected officials and Island County personnel, should be apprised of the timing of these inspections.

June 7, 2005

Ms. Tricia Miller
Water Quality Permit Coordinator
Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008 – 5452

via email: tmil461@ecy.wa.gov
cc: Donna Ortiz DeAnaya, dort461@ecy.wa.gov

Re: State Waste Discharge Permit No. 7396 for Nichols Brothers Boat Building, Inc.

Dear Ms. Miller:

Friends of Holmes Harbor (FoHH) is submitting the following comments on the draft Waste Discharge Permit No. ST-7396 for the Nichols Brothers Boat Builders, Inc. (NBBBI) ship building facility in Freeland, WA. FoHH is a large and ever-growing non profit organization dedicated to protecting our pristine Holmes Harbor and quality of life on Whidbey Island. Our organization consists of hundreds of private citizens who live around the greater Puget Sound area and cover all economical backgrounds and professions. A great number of our members live in Holmes Harbor and near the NBBBI facility.

FoHH appreciates the Department's permitting and enforcement efforts to ensure that permitted discharges from the NBBBI facility are protective of ground and surface water in and around Holmes Harbor.

General Comments:

1. Please verify that this permit covers NBBBI's current configuration, size, and operations only and that it is not contingent upon and does not cover NBBBI's proposed expansion or reconfiguration.
2. Please confirm that NBBBI is required to submit an application for permit modification to the Department if the facility expands or substantively changes its operations, practices, or procedures.
3. During the protracted permit application process, NBBBI failed to disclose that another business, Nichols Diversified Industries (NDI), operates at their Freeland, WA facility. NDI is not a ship builder. In the permit application, a NBBBI corporate officer certified that "the information submitted is, to the best of my knowledge and belief, true accurate and complete." Failure to disclose this information constitutes NBBBI providing false information in their permit application. What enforcement action is Ecology going to take for this violation?
4. NBBBI misrepresented their hours of operation in its permit application. NBBBI operates 7 am to 8 pm Monday through Saturday.

Comments on Draft State Waste Discharge Permit No. ST-7396:

5. Page 4, Summary of Permit Report Submittals. The due dates for two of the deliverables in this table do not match the schedule presented on page 22 of the Fact Sheet. The due date for item S11. Hydrogeologic Investigation Scope of Work should be September 7, 2005 and the due date for the Hydrogeologic Investigation Evaluation Report should be December 15, 2006.
6. Page 5, Section S1, second paragraph. Rinse water from yard cleaning and deck and hull cleaning and other processes could be as contaminated as pressure wash water. A requirement for sampling and characterizing this waste stream by NBBBI is necessary to ensure that this waste stream is conveyed to an appropriate treatment process and outfall.
7. Page 5, Section S1, last bullet; Section G1.D; and G3.B. NBBBI's current permit and this draft permit prohibit vessel repair and construction type activities on the cradle, crawler, and railway. In a supplemental permit application from NBBBI to Ecology dated October 7, 2004 signed by Bryan Nichols, Mr. Nichols states "No fabrication or repair work is done on the cradle, on the crawler, or over the water." Bryan Nichols repeated this claim to Donna Ortiz de Anaya, Ecology permit writer, during a telephone conversation on June 30, 2005. Mr. Nichols statements are false and misrepresent process knowledge Mr. Nichols knows to be true. In an email from Bryan Nichols to Donna Ortiz De Anaya dated July 5, 2005, Mr. Nichols states, regarding construction of the X-craft, "Work continued on the vessel while the cradle was under the vessel. I checked with our paint crew and some of the work included wet blasting and roll-on painting." In addition, FoHH provided photographic documentation to Ecology of X-craft construction on the cradle. Some of the photographs are available on NBBBI's own website. <http://www.nicholsboats.com/images/Construction/X-Craft/JAN05/2yard%20overview%20Feb%2005.JPG>. FoHH emailed copies of these photographs to the Department, as well as, a photograph showing the cradle (I-beams and wooden supports) in the water in Holmes Harbor after the X-craft launch.

NBBBI violated their current permit and knowingly provided false and misleading information in their permit application. This violates Section G1.D (Certifications) and G3.B (Permit Actions) of the General Conditions. What enforcement actions is Ecology taking against NBBBI for these permit violations and for knowingly providing false information on their permit application?

Because NBBBI performs construction work on vessels on the cradle, a NPDES permit is required for this facility.

8. Page 6, Section S2. NBBBI expanded its impervious surface work area, significantly increasing the volume of waste water entering the treatment system, without applying for a modification to their existing waste discharge permit. As a result of this illegal expansion, there are frequent overflows from the infiltration basin to the wetland which is hydrologically connected to Holmes Harbor. To protect the water quality of the wetland and Holmes Harbor, storage tanks with sufficient capacity to contain treated waste water until analytical results are available to demonstrate compliance with Outfall #1 criteria need to be installed.

If the permanent treatment system does not rely on the existing infiltration basin to capture overflow, NBBBI must be required to remove the interim infiltration basin and

restore the wetland after the permanent system is installed. This requirement needs to be added to the schedule in Section S12.

9. Page 8, Section S2.D, first sentence. Define "infrequent".
10. Page 8, second paragraph. NBBBI claims that overflows do not occur during business hours. To protect the water quality of the wetland and Homes Harbor, an alarm system with telemetry to notify NBBBI of overflows at all times needs to be installed. Furthermore, sample data for overflows entering the wetland or Holmes Harbor should be compared to surface water quality criteria, not ground water criteria.
11. Page 11, Section S3.E.1. Quantify "immediately".
12. Page 12, Section S4.A.3. The O&M Manual must include management plans and procedures for the structural controls designed to prevent marine water intrusion into the infiltration basin. These structural controls must be installed by September 15, 2005. A new or updated O&M Manual must be submitted to the Department within 30 days after the upgrades are completed (by October 15, 2005.) This requirement needs to be added to Section S12.
13. Page 12, Section S4.A.4. The O&M Manuals for the interim and permanent systems should include the requirement and procedures for daily sweeping and collection of process wastes.
14. Page 12, Section S4.B. NBBBI must notify the Department of releases due to flows greater than 10-year 24-hour storm events so that the magnitude of the storm event can be verified.
15. Page 14, S4.C.1. During rain events, surface water runs off the NBBBI property into the catch basin on Shoreview Drive which discharges directly into Holmes Harbor. How does Ecology propose to enforce the permit requirement in this paragraph for this discharge?
16. Page 14, S5. Does the Department's Solid Waste Program regulate testing or disposition of infiltration basin soils? Does this waste stream need to go to a permitted solid waste facility?
17. Page 15, S6.B. Sandblasting and painting generally are not conducted in enclosed buildings because vessels are longer and taller than existing structures. Furthermore, tarps are ineffective for controlling dust, paint spray and other fugitive emissions. NBBBI must obtain a variance to exceed the 35' shoreline building height restriction and the 40' upland building height restriction in Island County. It is unlikely that NBBBI can obtain a variance because Island County code states that "the granting of the variance shall be consistent with the purpose and intent of this Chapter and conditions will be imposed to ensure compatibility with surrounding permitted uses." Under Washington law, "shall" is to be construed with mandatory meaning. Surrounding permitted uses include residential uses. There are no conditions the Department of Ecology or Island County can impose to bridge the gap between industrial and residential uses in this area.

The 1983 Final Findings of Fact, Conclusions of Law & Order in Shoreline Hearings Board No. 83-6 on pg 16 paragraph 6 b. states "All fabrication buildings, existing and

proposed, shall be enclosed structures." It is obvious that these conditions were established to control the noise, light, glare, pollution and airborne particulates. Ecology must require NBBBI to conduct sandblasting and painting in enclosed facilities only.

18. Page 16, S6.C. How will Ecology verify that NBBBI has personnel trained to cleanup spills? What proof of training does NBBBI need to provide to Ecology?
19. Page 18, S6.J. Specifically when is NBBBI required to provide proof that they have developed and implemented a program to educate employees, contractors, and customers and what proof is required?
20. Page 19, S7.C. A new or updated Solid Waste Control Plan should be submitted to the Department by August 15, 2005. The plan should address disposition of the infiltration basin soils which must be changed out and disposed no later than September 21, 2005.
21. Page 19, S8. A back-up power generator must be required to prevent overflow of the treatment vault during power outages.
22. Page 19, S9. NBBBI must demonstrate that their bioswale has adequate capacity to contain and treat storm water.
23. Page 19, S9. The permit requires NBBBI to construct a barrier to prevent run-on of tidal marine water into the shipyard, infiltration basin and in the storm water collection system by September 15, 2005. Any and all local, state or federal permits required to perform work within the wetland to construct a barrier will be obtained by NBBBI from the appropriate agency prior to commencement of any construction. Copies of said permits will be sent to Donna Ortiz de Anaya at the Department of Ecology Northwest Regional Office by certified mail within 15 days of issuance of said permits and prior to commencement of any construction.
24. Page 20, S10. NBBBI must review its Spill Control Plan at least annually and submit updates to the Department, therefore, Spill Control Plan revisions and updates must be received by Ecology no later than 1 year after the permit issued date.
25. Page 22, S13. Will the Department advertise and make the SWPPP and BMPs, which are due November 1, 2005, available for public review and comment?
26. Page 19, S9. How many violations, exceedances, or overflows will Ecology tolerate before NBBBI is ordered to shut down the interim system and develop alternate means of collecting and treating waste water until the permanent system is operational?
27. Page 21, S12. Verify the date by which NBBBI is required to change out the soils in the interim infiltration basin.

Comments on Fact Sheet

28. Page 5, History. The integrity of NBBBI's storm water collection system needs to be verified. When will this be completed?
29. Page 6. Quantities and volumes reported in NBBBI's permit application are out of date or missing. How much sandblasting grit was used since 2003? How much water does

wet blasting generate? How is it collected? Is the Bobcat sweeper an effective way to collect wet blasting waste grit?

30. Page 7. Is the information on the average number and type of vessels provided in the permit application still accurate?
31. Page 7. How will Ecology verify that no pressure wash water reaches the treatment system? Is all work done on impervious surfaces with no cracks or voids? Is the waste water collection system a tight-line system?
32. Page 7. The marine rail system will also likely require cross bracing.
33. Page 8, paragraph 4. How frequently is there marine water intrusion into the work yard and treatment vault because of high tides?
34. Page 9. How did Ecology verify NBBBI's reported volumes of 35,200 gpd and 22,000 gpd (average)?

Respectfully submitted,

Friends of Holmes Harbor
Christine Goodwin, President
PO Box 493
Freeland, WA 98249
360-321-FOHH

From: Sheila Fleming [sheila.fleming@gmail.com]
Sent: Friday, July 08, 2005 4:07 PM
To: Ortiz De Anaya, Donna
Subject: Additional comments from FoHH on NBBBI
Tricia and Donna,

Friends of Holmes Harbor (FoHH) is submitting these comments in addition to the comments submitted earlier today.

1. In an email response to a request for information from Donna, Bryan Nichols stated that NBBBI places large vessels on the cradle over 30 days prior to launching and then continues to work on the vessel on top of the cradle until they launch the vessel and cradle into Holmes Harbor. Bryan Nichols' email (email thread attached) states that NBBBI has done this for numerous years and plans to continue doing this. This is not only a violation of their current permit; but this type of work requires NBBBI to have a NPDES permit. It is illegal for NBBBI to continue discharging to surface water under a State Waste Discharge Permit.
2. Launching of the cradle into the harbor significantly increases the potential for pollution to enter Holmes Harbor. The Department of Ecology must conduct a comprehensive investigation of sediment in Holmes Harbor to determine the nature and extent of sediment contamination and the damage to aquatic and benthic organisms resulting from releases from the NBBBI facility. The investigation will require characterization of background conditions as well as sediments near NBBBI to fully determine the nature and extent of contamination attributable to the NBBBI facility.
3. Since NBBBI chooses to disregard permit requirements, Ecology should conduct unannounced inspections, on at least a quarterly basis, to verify that operations are conducted within the limits of the permit.
4. Since Ecology is allowing NBBBI to continue to commingle process water and storm water, the Industrial Stormwater General Permit is not applicable to this facility. Either NBBBI must immediately cease all discharges to surface water or Ecology needs to order NBBBI to stop work until a NPDES permit is issued.

Thank you again for your cooperation in this matter. Please contact me or Christine Goodwin of FoHH if you have any questions.

Sincerely,

Sheila Fleming, P.E.



July 8, 2005

Tricia Miller
Water Quality Permit Coordinator
Department of Ecology Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008-5452
Via email: tmil461@ecy.wa.gov

RE: Permit No. ST-7396 Nichols Brothers Boat Builders, Inc.

To Ms. Miller:

Thank you for the opportunity to comment on the State Waste Discharge permit for Nichols Brothers Boat Builders. The project is located in Holmes Harbor, which has several fish and wildlife conservation areas including wetlands, eelgrass beds and herring and smelt spawning areas, as well as recreational and commercial shellfish beds.

People for Puget Sound is a citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits. We focus on water quality and habitat, advocating that the State of Washington devote more resources to the protection and restoration of the Sound. We are currently engaged in a major effort to save the 2000 miles of Puget Sound's shoreline through advocacy, education and habitat restoration and protection.

This property is a highly contaminating site that is not adequately protective of human health (nearby drinking water wells) and wildlife health. This site should be regulated under a site-specific NPDES permit rather than under a State Waste Discharge Permit. Stormwater and wastewater are commingled and are flowing into the ground, into a wetland and into Puget Sound.

We strongly support Puget Soundkeeper Alliance's comment letter, which mentions a number of important water quality issues. In addition, we have the following comments.

1. Sensitive wetland. Puget Sound has lost over 90% of its wetlands due to filling and development over the past century. The remaining wetlands must be protected as a high priority. Wetlands provide critical ecological functions including cleaning water, aquatic nursery habitat and bird habitat. The wetland that is adjacent to this site must be protected from the impacts of this site. It appears that the infiltration basin for wastewater from this site is constructed in a Class A wetland. This siting is unacceptable to People For Puget Sound because contaminated water is being infiltrated too close to a sensitive wetland. The Fact Sheet does not mention this illegal siting of the infiltration basin.

MAIN OFFICE	NORTH SOUND	SOUTH SOUND
911 Western Avenue, Suite 580 Seattle, WA 98104 (206) 382-7007 fax (206) 382-7006 people@pugetsound.org	407 Main Street, Suite 201 Mount Vernon, WA 98273 (360) 336-1931 fax (360) 336-5422 northsound@pugetsound.org	1063 Capitol Way South, Suite 206 Olympia, WA 98501 (360) 754-9177 fax (360) 534-9371 southsound@pugetsound.org

2. Treatment. The fact that the soils in the infiltration pond have to be cleaned out so often indicates that this site requires a system that cleans the stormwater more thoroughly before it reaches the infiltration bed. The treatment system includes settling and filtration through fabric filters. For a project using toxic chemicals in the process (both sandblasting and painting) and that includes a number of toxic chemicals used on-site, more filtering should be required such as carbon filters. This issue is of serious concern given the proximity of the wetland, drinking water wells and sensitive habitat in Holmes Harbor.

3. Groundwater Monitoring. Given that drinking water wells are within a sensitive zone at this site, groundwater and infiltration bed and soils monitoring should include toxic contaminants, such as metals and organic chemicals, which are known to be used on this property. These pollutants that appear to be entering Holmes Harbor must be monitored and stopped. The site location in Holmes Harbor is a "shoreline of the state" (to minus 4.5 feet MLLW) and "shoreline of statewide significance" (waterward of extreme lower low water).

3. Cradle Work. Although the draft Fact Sheet states that no work is done on boats while on the cradle, the Holmes Harbor community group has stated that they have photos to the contrary. It is unacceptable for work to be allowed on the cradle violating permit requirements.

4. Current Work. People For Puget Sound requests that this property be brought up to clean water standards immediately. Work continues at this site even though it is unpermitted. As noted by Puget Soundkeeper Alliance, Nichols Brothers should be held accountable for its past expansion (as well as its past discharges to surface waters), and should be required to meet modern standards now. Extensive impervious surfaces that have been created in the past five years lead to unacceptable overflows of polluted water to Holmes Harbor and the wetland.

Please make People For Puget Sound a party of record for this site.

If you have any questions, please feel free to call me or Heather Trim of my staff at (206) 382-7007 or Mike Sato at (360) 336-1931. Thank you for the opportunity to comment.

Sincerely,

Kathy Fletcher
Executive Director

cc:

Congressman Rick Larsen
2930 Wetmore Ave, Ste. 9E
Everett, WA 98201
(425) 252-3188
Rick.Larsen@mail.house.gov

Susan Powell
US Army Corps of Engineers
Post Office Box 3755
Seattle, Washington 98124-3755
(206) 764-5527
susan.m.powell@nws02.usace.army.mil

Page 3

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Paul Isaki
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002
(360) 902.0486
PaulI@CTED.WA.GOV

From: Ortiz De Anaya, Donna [mailto:DORT461@ECY.WA.GOV]
Sent: Thursday, July 07, 2005 11:31 AM
To: 'fohh@whidbey.com'
Subject: FW: You have received photos from Adobe Photoshop Album 2.0 Starter Edition

[My response to Bryans explanation.](#)

Donna Ortiz de Anaya
Environmental Engineer
Department of Ecology
Northwest Regional Office
Water Quality- Industrial
(425) 649-7276
Fax (425) 649-7098
email dort461@ecy.wa.gov

-----Original Message-----

From: Ortiz De Anaya, Donna
Sent: Wednesday, July 06, 2005 9:29 AM
To: 'bnichols@whidbey.com'
Cc: 'tatkins@parametrix.com'; Drabek, John
Subject: RE: You have received photos from Adobe Photoshop Album 2.0 Starter Edition

Bryan,

Since you have a State Waste Discharge Permit you do not have authority to discharge pollutants to surface water. When you are working in your yard, pollutants from blasting, sanding and painting hit the ground and are routed to your treatment system and then to ground. Discharges to ground are monitored and regulated by your permit. The problem with working on the cradle is that there exists a potential for pollutants to discharge into surface water, namely Holmes Harbor. These potential discharges are not covered under the current or the new draft permit so there are no BMPs, monitoring or other conditions in your permit to protect the Harbor.

Activities which may **not** be conducted on the cradle, crawler or railway include:

pressure washing or blasting of hulls, painting and coating of hulls and underbelly of catamarans, engine and propulsion system repair and replacement, hull repair, joinery, bilge cleaning, fuel and lubrication system repair and replacement, welding and grinding of hull, buffing and waxing, marine sanitation device (MSD) repair and replacement, and other activities necessary to maintain a vessel. This definition extends to mobile facilities as well.

Activities which may be conducted on the cradle, crawler or railway include: engine repair or maintenance within the engine space without vessel haul-out, topside cleaning, detailing and bright work, electronics servicing and maintenance, MSD servicing and repair that do not require haul-out, vessel rigging, minor repairs or modifications to the vessel's superstructure.

Carpentry and finishing work done within the vessel is allowed. The main point is that you may not have a potential for pollutants to enter surface water through the launching system. You could do this under the NPDES permit as those activities could be regulated under that permit.

I hope I have clarified the regulations as the permit is about to go out and I do want to make sure I have covered your facility with the proper authority. Thank you for taking the time to think about your operations and respond to me with the method you will utilize in the future when finishing preparations on the vessels prior to launching.

Donna

-----Original Message-----

From: Bryan Nichols [mailto:bnichols@whidbey.com]
Sent: Tuesday, July 05, 2005 4:16 PM
To: Ortiz De Anaya, Donna
Subject: RE: You have received photos from Adobe Photoshop Album 2.0 Starter Edition

Dona,

Thanks for sending the e-mails.

As I mentioned on the phone last week, the language in the permit that restricts any work on the cradle will be an issue for us and it will be addressed in our comments.

Most of our smaller vessels only need the launch rig under a week or so before launch. Work on the vessels continue after the launch rig is under. In the case of the X-Craft we had to build a new cradle and we moved it under the vessel a little over a month before launching. The cradle was moved into place the week before the Christening. The Christening was on February 5th, 2005 and the boat was launched March 11th, 2005. Work continued on the vessel while the cradle was under the vessel. I checked with our paint crew and some of the work included wet blasting and roll-on painting.

Are we currently restricted from doing work on our cradles?

Following is a description of each picture sent by "Friends of Holms Harbor"

Picture - Img_1471 - Wet blasting of the vessel, does not show cradle, no date on picture, maybe taken 1/19/05?

Picture - Img_1473 - Wet blasting of the vessel, does not show cradle, no date on picture, maybe taken 1/19/05?

Picture - Nichols Crew on Feb 7 2005- Nichols crew standing in front of the x-craft, cradles in place, 2/7/05, photo by Nichols Brothers Boat Builders, Inc.

Picture - Working on Xcraft prior to launch - Work on x-craft just before the Christening, cradles in place, taken around 2/4/05, photo by Nichols Brothers Boat Builders, Inc.

Picture - Launch system of Xcraft - launch system sitting in the water after the launch, no date, 3/12/05 maybe?

Picture - Underside of x boat - a couple of workers under the x-craft, maybe touch up paint, cradles in place, not date, Picture taken by Nichols Brothers Boat Builders, Inc.

Picture - Xcraft prior to launch - looks like x craft prior to launch sitting on cradles, no date, Picture taken by Nichols Brothers Boat Builders, Inc.

I hope this is enough information for you.

Thanks,

Bryan Nichols
President

Nichols Brothers Boat Builders, Inc.
PO Box 580 / 5400 S. Cameron Rd.
Freeland, WA 98249
Phone: 360-331-5500 x314
Fax: 360-331-6181
E-Mail: bnichols@whidbey.com
Web Site: www.nicholsboats.com

-----Original Message-----

From: Ortiz De Anaya, Donna [<mailto:DORT461@ECY.WA.GOV>]
Sent: Tuesday, July 05, 2005 12:32 PM
To: 'Bryan Nichols'
Cc: 'tatkings@parametrix.com'
Subject: FW: You have received photos from Adobe Photoshop Album 2.0 Starter Edition

Bryan,
Friends of Holmes Harbor has sent us the attached emails which infer external blasting work done on the X-Craft while it was sitting on the cradle before launching. This community group believes Nichols Brothers was working (blasting) the vessel both underneath and externally while sitting on the cradle. It does appear that way looking at these photos. Can you explain otherwise? I need to be clear that the draft permit does not allow any blasting done on the cradle, crawler, railway or other device used to transport the vessel into the Harbor. Thanks Donna Ortiz de Anaya Environmental Engineer Department of Ecology Northwest Regional Office Water Quality- Industrial
(425) 649-7276
Fax (425) 649-7098
[email dort461@ecy.wa.gov](mailto:dort461@ecy.wa.gov)

-----Original Message-----

From: Friends of Holmes Harbor [<mailto:fohh@whidbey.com>]
Sent: Thursday, June 30, 2005 5:47 PM
To: Ortiz De Anaya, Donna
Subject: You have received photos from Adobe Photoshop Album 2.0 Starter Edition

Donna,
This is the other photo taken on 1/19/05 showing the status of wetblasting on the Xcraft.
Friends of Holmes Harbor

The sender has included tags, so you can do more with these photos.
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NICHOLS BROTHERS BOAT BUILDERS, INC. COMMENTS

State Waste Discharge Permit ST-7396

Comment #1 – Summary of Permit Report Submittals (page 4)

First submittal date for the Discharge Monitoring Report should be September 7, 2005

First submittal date for the Engineering Report should be March 1, 2007

First submittal date for the Hydrogeological Investigation – Scope of Work should be September 7, 2005

First submittal date for the Hydrogeological Investigation – Evaluation Report should be December 15, 2006

First submittal date for the Best Management Practices/Pollution Prevention Plan should be March 15, 2007

Comment #2 – Special Condition S1 – Discharge Limitations (page 5), Last Bullet

Vessel repair, fabrication and construction activities conducted while the vessel is on the crawler or cradle should be allowed when the vessel and cradle/crawler are located wholly within the boundaries of the NBBBI facility and within the zone of capture of the waste water treatment system. The cradle is sometimes placed on the crawler and then the vessel is placed on the cradle; at other times, depending on the vessel, the vessel is placed on the cradle and then the crawler is slid under the cradle. Appropriate BMPs should be implemented and in-place prior to and during any repair, fabrication or construction activities to ensure that the vessel and cradle/crawler are clean prior to leaving the boundaries of the NBBBI facility and the zone of capture of the waste water treatment system. Vessel repair, fabrication and construction activities should only be prohibited once the vessel and cradle/crawler leave the boundaries of the NBBBI facility and the zone of capture of the waste water treatment system.

Comment #3 – Special Condition S8 – Engineering Report (Facility Plan) for New Wastewater Treatment System (page 19), 1st Paragraph, Last Sentence

The date should be March 1, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Fact Sheet for State Waste Discharge Permit ST-7396

Comment #4 – Background Information – Vessel Transfers (page 6), 1st Paragraph, 5th Sentence

This sentence should be modified to indicate “No fabrication, repair, or construction work is done on the vessel while it is resting on the cradle *or crawler and outside the boundaries of the NBBBI facility and the zone of capture of the waste water treatment system.*”

Comment #5 – Treatment System Design (page 8), 4th Paragraph, Last Sentence

When flow occurs it is noted, and the flow is tested in accordance with Special Condition S2 of the State Waste Discharge Permit. However, the flow is not metered.

Comment #6 – Treatment System Design (page 8), 5th Paragraph, Second Sentence

NBBBI has agreed to upgrade their stormwater treatment facility to accommodate the 10-year, 24-hour storm event. However, in this context, comparing the NBBBI facility to the other shipyards isn't appropriate since the other shipyards do not have on-site treatment and disposal systems. They discharge their stormwater to municipal sewer systems (where it subsequently goes to municipal treatment systems). This is not an option to NBBBI as such a system is not available to them. Therefore, the second sentence should be deleted.

Comment #7 – Treatment System Design (page 9), 2nd Paragraph

NBBBI agreed to evaluate these potential improvements to the existing treatment system, but not to necessarily do all of them. Accordingly, either the text should be modified to indicate this, or the 2nd and 5th bullets should be deleted.

Comment #8 – Treatment System Design (page 11), 1st Paragraph, 3rd Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Comment #9 – Treatment System Design (page 11), 1st Paragraph, Last Sentence

This sentence should be modified to indicate that “....*if needed*, the engineering report will include a barrier prohibiting seeps.....” since the new infiltration basin may not have built up banks.

Comment #10 – Treatment System Design (page 12), 4th Paragraph, Last Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Comment #11 – Proposed Permit Limitations – Storm Water and Rinse Water (page 17), 1st Paragraph, 1st Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Comment #12 – Other Permit Conditions – Overflow Discharge to Holmes Harbor and Adjacent Wetlands (page 20), 2nd Paragraph, Last Sentence

The last sentence should be deleted; it conflicts with the first sentence in the paragraph, and the current system was only designed for the 6-month, 24-hour design storm.

Comment #13 – Other Permit Conditions – Engineering Report Required for Treatment System Upgrade (page 21), Last Paragraph, Last Sentence

The date should be March 1, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.

Comment #14 – Other Permit Conditions – Compliance Schedule–New Design to Meet Water Quality Standards (page 22), 1st Paragraph, 1st Sentence

The date should be September 30, 2007, in accordance with Special Condition S12 of the State Waste Discharge Permit.